

Nos. 87-1622, 87-1697, 87-1711  
CONSOLIDATED

IN THE  
**SUPREME COURT**  
OF THE  
UNITED STATES  
**OCTOBER TERM, 1987**

Supreme Court, U.S.

**FILED**

**AUG 3 1988**

JOSEPH F. SPANGLER  
CLERK

No. 87-1622

**PHILIP BRENDALÉ,**

*Petitioner,*

v.

**CONFEDERATED BANDS AND TRIBES  
OF YAKIMA INDIAN NATION, et. al.,**

*Respondents.*

No. 87-1697

**STANLEY WILKINSON,**

*Petitioner,*

v.

**CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,**

*Respondent.*

No. 87-1711

**COUNTY OF YAKIMA, et. al.,**

*Petitioners,*

v.

**CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,**

*Respondent.*

**ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
JOINT APPENDIX**

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The following opinions, decisions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages of the appendices to the Petitions for Certiorari in Nos. 87-1622, 87-1697, and 87-1711, which are consolidated before this Court:

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
(Whiteside I)**

**C-83-604-JLQ, Confederated Tribes and Bands of the  
Yakima Indian Nation v. Whiteside, et.al.**

<b>DATE</b>	<b>NR</b>	<b>PROCEEDINGS</b>
<b>1983</b>		
Sep. 12	1	COMPLAINT For Declaratory And Injunctive Relief And Damages — issued summons
Oct. 13	36	ANSWER AND COUNTER-CLAIM of Defendants — Brendale and Glaspey
Oct. 17	37	ANSWER of Deft's Whiteside, Tollefson, Klarich and Anderwald to Complaint for Declaratory and Injunctive Relief and Damages
Dec. 21	58	MOTION to Intervene (Deft. Stanley L. Wilkinson)
<b>1984</b>		
Jan. 9	83	ORDER (JLQ) (denying # 58 but allowing Wilkinson to participate in this matter as an amicus curiae)
Jan. 24	97	PLTF'S REPLY to Counterclaim of Deft Brendale and Glaspey
Jan. 30	112	*ANSWER OF Deft's Whiteside, Tollefson, Klarich and Anderwald to Complaint for Declaratory and Injunctive Relief and Damages
Feb. 10	127	ORDER Dismissing Deft Glaspey (Frank Glaspey dismissed with prejudice and without cost) (JLQ)
Mar. 14	134	AFFIDAVIT (Brendale)
Mar. 19	135	SUPP. AFFIDAVIT of Deft-Brendale in Support of his "Motion for Reconsideration"

Date	NR	Proceedings
1985		
Sep. 11	140	<p><b>MEMORANDUM OPINION (JLQ)</b>  (judgment shall be entered in favor of Plaintiff against all defendants (except Frank Glaspey) to the following extent: The court declares that the Yakima Indian Nation has exclusive regulatory jurisdiction over the land use of the Brendale property described on page 12 of this memorandum opinion. As to pltf's 42 USC 1983 claims judgment shall be entered in favor of defendants Jim Whiteside, Graham Tollefson, Charles Klarich, Richard Anderwald, Philip Brendale and Frank Glaspey. Pltf's 42 USC 1983 claims are dismissed with prejudice. All parties shall bear their own attorney fees)</p>
Sep. 11	141	<p><b>JUDGMENT IN A CIVIL CASE</b> (that judgment is entered in favor of pltf against all defts (except Frank Glaspey) to the following extent: The Court declares that the Yakima Indian Nation has exclusive regulatory jurisdiction over the land use of the Brendale property described on page 12 of the foregoing Memorandum Opinion. As to plaintiff's 42 USC 1983 claims, judgment is entered in favor of Defts Jim Whiteside, Graham Tollefson, Charles Klarich, Richard Anderwald, Philip Brendale and Frank Glaspey. Plaintiff's 42 USC 1983 claims are dismissed with prejudice. All parties shall bear their own attorneys fees)</p>

<b>Date</b>	<b>NR</b>	<b>Proceedings</b>
Sep. 19	142	AMENDED MOTION FOR RECONSIDERATION (Deft Brendale)
Oct. 23	148	MOTION For Reconsideration (deft)
Nov. 5	152	ORDER DENYING Defendant Brendale's Amended Motion for Reconsideration (JLQ)
Nov. 8	153	NOTICE OF APPEAL (deft Brendale atty Flower)
Nov. 20	155	ORDER denying deft Brendale's Motion Rule 60(b) FRCP
Dec. 19	157	NOTICE OF APPEAL (deft. Brendale atty Flower)

\*This is an AMENDED ANSWER

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
(Whiteside II)**

**C-83-724-JLQ, Confederated Tribes and Bands of the  
Yakima Indian Nation vs. County of Yakima, et. al.**

<b>Date</b>	<b>NR</b>	<b>Proceedings</b>
<b>1983</b>		
Oct. 28	1	COMPLAINT For Declaratory And Injunctive Relief And Damages — issued summons
Nov. 21	3	ANSWER of Defendant Stanley Wilkinson
Dec. 2	8	SUMMONS — served all defts
Dec. 9	21	ANSWER, CROSS-CLAIM & COUNTERCLAIM (defts Gatliff & Keller)
Dec. 9	22	ANSWER of Defts Yakima County, Whiteside, Tollefson, Klarich & Anderwald
<b>1984</b>		
Jan. 3	27	ANSWER to Cross-Claim (Deft Yakima Co., et. al.)
Apr. 13	49	ANSWER to Defendants Gatliff and Keller's Counterclaim
May 14	70	ORDER DISMISSING CROSS-CLAIMS (JLQ) (Defts' Gatliff and Keller's cross-claims against co-defendants Wilkinson, Anderwald, Klarich, Tollefson, Whiteside and the County of Yakima are dismissed without prejudice)
June 8	81	REPORTER'S TRANSCRIPT — FINDINGS OF FACT AND CONCLUSIONS OF LAW (Y/JLQ)



Date	NR	Proceedings
1985		
Sep. 11	100	MEMORANDUM OPINION (JLQ) (the court declares that the Yakima Nation has no authority to exercise regulatory jurisdiction over the land use of the Wilkinson property described in this memorandum opinion. Plts's request for declaratory and injunctive relief is denied and its regulatory jurisdiction claim is dismissed with prejudice. Yakima County's Declaration of Non-Significance is affirmed and pltf's pendent state SEPA claim is dismissed with prejudice)
Sep. 11	101	JUDGMENT IN A CIVIL CASE (that the Yakima Nation has no authority to exercise regulatory jurisdiction over the land use of the Wilkinson property described in the preceding Memorandum Opinion. Plaintiff's request for declaratory and injunctive relief is denied and its regulatory jurisdiction claims is dismissed with prejudice. Yakima County's Declaration of Non-Significance is affirmed and plaintiff's pendent state SEPA claim is dismissed with prejudice)
Sep. 20	102	MOTIONS TO AMEND JUDGMENT, Findings and Decision Filed September 11, 1985 and NOTICE of Argument (10/21/85 Y/JLQ) Denied 10-21-85

Nov. 5     108    ORDER DENYING PLAINTIFF'S  
Motion to Amend Judgment (JLQ)

Nov. 29    114    NOTICE OF APPEAL (pltf atty  
Hovis) cc's 9CCA, attys Hovis,  
Sullivan, Johnsen, Carlson & Berg  
w/certificate of service

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
(Whiteside I)

85-4316, Confederated Tribes and Bands of the Yakima Indian Nation, Plaintiff Appellee, v. Jim Whiteside, Graham Tollefson, Charles Klarich, Richard Anderwald, Defendants and Phillip Brendale, Defendant-Appellant. DC No C83-604 JLQ, Notice of Appeal Filed 11/08/85; Consolidated: 85-4433, 85-4383

Date	Filings-Proceedings
1985	
Nov. 12	DOCKET NUMBER ASSIGNED.
1986	
Feb. 18	Filed CERTIFICATE OF RECORD (02-07-86)
Mar. 14	Filed order (CONFATT, SMJ) (1) These appeals are consolidated, 85-4316, 85-4433, 85-4383.
Nov. 7	FILED as of 02-18-86, CERTIFIED TRANSCRIPT OF RECORD ON APPEAL IN 4 VOLUMES, VOLUMES 1 thru 3 PLEADING (COPY), VOLUME 4 RTS (ORIGINAL) (sent directly to judge)
Nov. 12	AS OF NOV. 6 ARGUED & SUBMITTED before: SKOPIL, FLETCHER & POOLE, CJJ.

1987

- Sept. 21 ORDERED OPINION (FLETCHER) FILED & JUDGMENT TO BE FILED AND ENTERED.
- Sept. 21 Filed opinion — the district court's judgment in Whiteside I is affirmed. Its judgment in Whiteside II is reversed and remanded.
- Sept. 21 Filed & Entered Judgment.
- Oct. 5 Filed orig & 40 appt's (Brendale) petition for rehearing en banc. (PANEL & ACTIVE JUDGES) 10/2
- Oct. 5 Filed in 85-4383, orig & 40 aplees' (County of Yakima, et.al.) petition for rehearing en banc. (PANEL & ACTIVE JUDGES) 10/2

Date	Filings-Proceedings
Oct. 19	Filed Original and 40 copies of appellees' (Yakima, et.al.,) motion to supplement petition for rehearing and suggestion for rehearing en banc. (PANEL) (remaining motions on shelf), served on 10-16-87.
1988	
Jan. 13	Filed order (SKOPIL, FLETCHER, POOLE) The request of County of Yakima to suppl. its petition for rehearing is granted. The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.
Jan. 19	Filed appellees (BRENDAL) motion for stay of mandate pending application for writ of certiorari, served on 1/18/88
Jan. 19	Filed appellees motion for stay of mandate pending application for writ of certiorari, served on 1/18/88
Feb. 2	Filed order (FLETCHER) The motion of Appellees County of Yakima, et. al., for an order staying issuance of the mandate pursuant to FRAP 41(b) is granted. Stay of mandate be for thirty days to be continued upon the filing of the Petition for Writ of Certiorari until final disposition by the Supreme Court.

Date	Filings-Proceedings
Feb. 2	Filed order (FLETCHER) The motion of Appellant Brendale for an order staying issuance of the mandate pursuant to FRAP 41(b) is granted. Stay of mandate shall be for thirty days to be continued upon the filing of the Petition for Writ of Certiorari until final disposition by the Supreme Court.
Mar. 15	Filed order (FLETCHER) The stay of mandate is extended to 04-01-88. No further extensions will be granted by this court.
Apr. 8	Rec'd as of 4/7/88 notice from Supreme Court of filing of petition for writ of certiorari 3/31/88 (S.C. #87-1622).
June 27	FILED Certified copy of SC Order allowing certiorari (Filed in SC 6/20/88) the petition herein for a writ of certiorari to the United States Court of Appeals for the 9th Circuit is granted. The case is consolidated with SC # 87-1622 (CA# 85-4433) Phillip Brendale v. Confederated Bands and Tribe of Yakima Indian Nation, et. al. and SC# 87-1711 (CA # 85-4383), County of Yakima Indian Nation, and a total of one hour is allotted for oral argument.



**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
(Whiteside I)**

**\*85-4433, Confederated Tribes and Bands of the Yakima Indian Nation, Plaintiff-Appelle vs. Jim Whiteside, Graham Tollefson, Charles Klarich, Richard Anderwald, Defendants, and Phillip Brendale, Defendant-Appellant. DC No. C83-604JLQ; Notice of Appeal Filed December 19, 1985; Consolidated: 85-4316, 85-4383.**

<b>Date</b>	<b>Filings-Proceedings</b>
1985	
Dec. 26	DOCKET NUMBER ASSIGNED. JS-34 PREPARED.
Mar. 14	Filed order in 85-4316, (CONFATT, SMJ) (1) These appeals are consolidated 85-4216, 85-4433, 85-4383.

**FOR FURTHER PROCEEDINGS, SEE 85-4316**

**\*Defendant Brendale filed two Notices of Appeal in Whiteside I resulting in the assignment of two Ninth Circuit docket numbers, 85-4316 and 85-4433.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
(Whiteside II)

85-4383, Confederated Tribes And Bands of the Yakima Indian Nation, Plaintiff-Appellants, vs. County of Yakima, Jim Whiteside, Graham Tollefson, Charles Klarich, Richard F. Anderwald, Stanley Wilkinson, Jim Gatliff and Dick Keller, Defendants-Appellees. DC No. C83-724JLQ; Appeal filed November 29, 1985; Consolidated: 85-4316, 85-4433.

Date	Filings-Proceedings
1985	
Dec. 6	DOCKET NUMBER ASSIGNED. JS-34 PREPARED.
1986	
Mar. 14	Filed order in 85-4316, (CONFATT, SMJ) (1) These appeals are consolidated, 85-4316, 85-4433, 85-4383
Apr. 24	FILED CERT OF RECORD (4/4/86)

FOR FURTHER PROCEEDINGS, SEE 85-4316

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF WASHINGTON

NO. C-83-604-JLQ

COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF AND DAMAGES  
FILED SEPTEMBER 12, 1983

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,  
*Plaintiff,*

v.

JIM WHITESIDE, GRAHAM TOLLEFSON,  
CHARLES KLARICH, RICHARD ANDERWALD,  
PHILIP BRENDAL and FRANK GLASPEY,  
*Defendants.*

Plaintiff alleges as follows:

1. Nature of Proceedings:

1.1. Nature of the case. This is an action for declaratory and injunctive relief and for damages brought pursuant to 28 USC Sec. 2201, 28 USC Sec. 1362, and arises under 28 USC Sec. 2201, 42 USC Sec. 1983, 42 USC Sec. 1988, Treaty with the Yakimas, 12 Stat. 951, Enabling Act, 25 Stat. 676, and under Article 1, Section 8, Article 6, Section 2, and the Fourteenth Amendment of the United States Constitution, as is hereinafter more fully set forth.

1.2. Jurisdiction of this Court. This Court has jurisdiction of this cause pursuant to 28 USC Sec. 1362, because the plaintiff, Confederated Tribes and Bands of the Yakima Indian Nation (hereinafter called "Yakima Indian Nation"), is an Indian tribe or nation with a governing body recognized by the Secretary of Interior, and the matter in controversy arises under the Constitution, laws and treaties of the United States.

In addition, this Court has jurisdiction of this cause pursuant to 28 USC Sec. 1343 for the deprivation of the constitutional rights, privileges and immunities of plaintiff.

## 2. Parties:

2.1. The Yakima Indian Nation, plaintiff, is a sovereign Indian nation or tribe established by treaty with the United States of America (12 Stat. 951) with a governing body duly recognized by the Secretary of Interior of the United States. Said Yakima Nation, through its governing body, exercises certain treaty-reserved governmental powers within the exterior boundaries of the Yakima Indian Reservation (which are described in the Treaty with the Yakimas). These powers will be more particularly and appropriately described in this Complaint.

2.2 Defendants Jim Whiteside, Graham Tollefson and Charles Klarich, are residents of the County of Yakima, State of Washington, and are the county commissioners of the County of Yakima, State of Washington. Said County of Yakima is a municipal corporation or county of the State of Washington.

2.3 Defendant Richard Anderwald is a resident of the County of Yakima, State of Washington, and is the Director of the Planning Department, County of Yakima, State of Washington.

2.4 Philip Brendale and Frank Glaspey are residents of the County of Yakima, State of Washington.

## 3. Facts Relevant to Plaintiff's Request for Relief.

3.1. The Yakima Indian Reservation, described in the Treaty with the Yakimas, was explicitly reserved by the Treaty with the Yakimas "for the exclusive use of said confederated tribes and bands of Indians" now the Yakima Indian Nation. Said treaty likewise explicitly provides that no non-member, excepting those in the employment of the Indian Department, shall "be per-

mitted to reside upon the said reservation without the permission of the tribe, the superintendent or agent”.

3.2. The Enabling Act (25 Stat. 676) provides that the State of Washington shall have no jurisdiction over lands within the Yakima Indian Reservation.

3.3. The Yakima Indian Nation has, pursuant to its reserved governmental powers, through its governing body, adopted resolutions prohibiting entry by non-members without tribal permit into a portion of the Yakima Reservation and has adopted land use and zoning resolutions regulating land use within the Yakima Indian Reservation. Said land use regulations except incorporated cities and towns within the Yakima Indian Reservation, but regulate land use in all other parts of the reservation and the area of controversy described herein.

3.4. On April 29, 1983, defendants Philip Brendale and Frank Glaspey filed an application with the Yakima County Planning Department for a preliminary plat requesting approval by the defendant Yakima County Commissioners of a preliminary plat permitting the construction of cabins and residences on lands within Section 14, Township 8 North, Range 14, EWM.

3.5. Said parcel, title of which is held in a non-trust status, is within the “Closed Area” of the Yakima Indian Reservation where no entry is authorized without the permission of the Yakima Indian Nation and is within the “Reservation Restricted Area” where buildings or other permanent structures for private use are prohibited by land use regulations of the Yakima Indian Nation.

3.6. Defendants Philip Brendale and Frank Glaspey have refused to seek the permission of the Yakima Indian Nation to construct such buildings or structures or to obtain permission for entry to these buildings or structures when constructed. Defendant Philip Brendale, titleholder of the parcel, has announc-



ed by word and deed that he will not comply with the land use regulations of the Yakima Indian Nation.

3.7. All defendants have taken the position that Yakima County has exclusive land use regulatory power within non-trust and non-restricted lands within the Closed Area, Reservation Restricted Area, and indeed the entire Yakima Indian Reservation, without regard to the provisions of the Treaty with the Yakimas and land use and entry resolutions, ordinances and laws of the Yakima Indian Nation.

3.8. In addition to the governmental and regulatory powers of the Yakima Indian Nation, the Yakima Indian nation is the beneficial owner of treaty-reserved and otherwise acquired lands and resources within the Yakima Indian Reservation. The members of the Yakima Nation are likewise beneficial owners of lands and resources within the Yakima Indian Reservation.

In the Closed Area, in Yakima County, the land holdings are approximately as follows:

Owned by Yakima Nation:	636,000 acres;
Owned by Individual Indians:	79,000 acres;
Other:	25,000 acres.

3.9. In the Closed Area the Yakima Indian Nation has established a game preserve to assist the propagation of game animals which contributes greatly to the livelihood of the members of the Yakima Indian Nation and its culture. Likewise, the Closed Area and its restricted character, is important to the preservation of natural foods and medicines and the fulfillment of the cultural way of life of the Yakima Nation and its members.

3.10. The forest area, from which income is derived and which is the primary source of funding for governmental operations of the Yakima Indian Nation, is within said Closed Area. Increased usage increases fire danger to this important resource and increases the



cost to protect this important resource.

3.11. The regulation of land use within the exterior boundaries of the Yakima Indian Reservation is necessary to the political integrity of the Yakima Indian Reservation and the health, welfare and safety of the Yakima Indian Nation and its members and residents of the Yakima Indian Reservation.

3.12. On June 20, 1983, after acceptance of the power and jurisdiction of the County of Yakima to control land use of non-trust and non-restricted lands within the exterior boundaries of the Yakima Indian Reservation, defendant Richard Anderwald, Director of Yakima County Planning Department, under color of state law, determined that the preliminary plat and the change in land use of the premises involved herein would not have a significant adverse impact on the environment and issued a declaration of non-significance under the Washington State Environmental Policy Act (SEPA) regarding said proposed land use.

3.13. On June 22, 1983, within the three-day appeal period, the plaintiff filed a notice of appeal of this determination with Yakima County Commissioners alleging that Yakima County did not have jurisdiction or power to regulate or permit land use contrary to the usage permitted by the Yakima Indian Nation and in the alternative that the proposed land use would have significant adverse impact upon the environment and that an environmental impact statement (EIS) is required under Washington State Environmental Protection Act (SEPA). (RCW 43.21C.030(2)).

3.14. During the hearing of this appeal on August 1, 2, 8 and 9, 1983, defendants Jim Whiteside, Graham Tollefson and Charles Klarich, held that under state law they had jurisdiction to determine and regulate land usage within the exterior boundaries of the Yakima Indian Reservation and that under state law and county ordinance they would not hear evidence or argument

contesting the exclusive power of the County of Yakima to regulate land use on non-trust or non-restricted lands within the exterior boundaries of the Yakima Indian Reservation. Under this ruling, defendants were foreclosed and prohibited from presenting evidence or further argument on the land use power of the Yakima Indian Nation to determine and regulate land use within said Yakima Indian Reservation. All of these determinations were made under color of state law by said defendants.

3.15. Said determinations deprived plaintiff of due process under the Fourteenth Amendment of the United States Constitution, were a violation of the Yakima Indian Nation's treaty rights, contrary to the Supremacy Clause of Article 6 of the United States Constitution and invaded the power and political integrity of the Yakima Indian Nation and the Congress of the United States embodied in the Commerce Clause of Article 1 of the United States Constitution, the Enabling Act, Treaty with the Yakimas and federal law.

3.16. After hearings on the appeal, the defendant County Commissioners determined that the proposed land use would have a significant adverse impact on the environment, reversed the declaration of non-significance, issued a declaration of significance and directed that an EIS be prepared as appears more fully from copies of said determinations issued August 16, 1983, attached hereto as Exhibit "A" and made a part hereof by reference.

3.17. Defendant County Commissioners, Jim Whiteside, Graham Tollefson and Charles Klarich, are continuing under color of state law to regulate and determine land use of the parcel herein involved and have merely continued this determination — without regard to Yakima Indian Nation permitted or prohibited land use on the Yakima Indian Reservation — until such time as the EIS is prepared. Defendants Philip Brendale, Frank Glaspey and Richard Ander-

wald, are joining with and acting in concert with said defendant Commissioners Jim Whiteside, Graham Tollefson and Charles Klarich, in such action and all defendants seek to impose this change of land use within the Yakima Indian Reservation without obtaining or applying for permission of the Yakima Indian Nation and contrary to the duly promulgated land use and entry regulations of the Yakima Indian Nation.

3.18. Defendants Philip Brendale and Frank Glaspey have informed the Yakima Indian Nation that they intend to sell portions of the parcel involved herein for building sites contrary to the land use and entry regulations of the Yakima Indian Nation and to use these premises in a manner contrary to the entry and land use regulations of the Yakima Indian Reservation. They are taking this action under color of state law.

3.19. These actions by all defendants are under color of state law including namely: Chapter 43.C, Chapter 36.70, Chapter 58.17 RCW, and county ordinances promulgated thereunder.

3.20. Said defendants individually and in concert have attempted and continue to impose county land use regulations and certain land use within the Yakima Indian Reservation contrary to the wishes of the Yakima Indian Reservation and land use and entry regulations promulgated by the Yakima Indian Reservation.

3.21. The Congress of the United States has never authorized the State of Washington, or any county thereof, power to permit and regulate land use on any lands within the Yakima Indian Reservation contrary to the land use and entry regulations of the Yakima Indian Nation and the power to regulate entry and land use within the Yakima Indian Reservation has been reserved exclusively to the Yakima Indian Nation by the Treaty with the Yakimas and by federal law.

3.22. All of the actions of the defendants are under color of state law, are unlawful and are in viola-

tion of the plaintiff's rights, privileges and immunities as guaranteed by the Constitution, laws and treaties of the United States, and by denying plaintiff's right to be heard on the power and jurisdiction question, defendants Jim Whiteside, Graham Tollefson and Charles Klarich, have denied plaintiff due process of law.

3.23. As a direct and proximate result of these concerted acts by defendants, and each of them, plaintiff has suffered actual, immediate and continuing harm. In defendants' assault against the political integrity, health, safety and welfare of the Yakima Indian Nation, they have caused these special damages:

3.23.1. Cost of preparing for and appearing at the County proceedings in a vain attempt to protect their reserved rights, privileges and immunities by establishing under Yakima County's lack of jurisdiction and power to permit and grant land use and entry contrary to the Treaty with the Yakimas and land use and entry regulations of the Yakima Indian Nation.

3.23.2. Cost of continuing to prepare for and appearing (attorney's fees and other costs) at administrative hearings regarding this proposed action by the defendants.

3.23.3. Extreme mental, emotional and psychological distress caused by these attempted intrusion tactics into the political integrity, health, welfare and safety of the Yakima Indian Nation and a closed area within its reservation reserved for its exclusive use and benefit by the Treaty with the Yakimas.

3.23.4. The cost of preparing for and trying this matter (attorney's fees and other costs) to obtain a declaratory judgment and other relief to protect the federally and constitutionally guaranteed rights, privileges and immunities of the Yakima Indian Nation.

The money equivalent of these damages is not as-

certainable at this time, because the damage to plaintiff continues. Said amounts will be furnished prior to trial and it is alleged that they exceed \$100,000.00.

3.24. The damage and continuing damage to the plaintiff is irreparable and plaintiff has no adequate remedy at law. This unwarranted and illegal action by defendants strikes at the very heart of the political integrity of the Yakima Indian Nation and its welfare, health and safety. Until resolved, the basic issue is a continuing effect on the political integrity of the Yakima Indian Nation, its health, welfare and safety, and the enjoyment of treaty-reserved and constitutionally-guaranteed rights, immunities and privileges. Until resolved, it will impede the general welfare and the exercise of the governmental function of the Yakima Indian Nation. Speedy granting of restraints against defendants is in order.

#### 4. Relief Requested.

4.1. Wherefore, plaintiff prays that this Court:

4.1.1. Issue a temporary restraining order on this complaint, record and roll, restraining defendants from permitting, or to take any action towards permitting, land use contrary to the land use and entry regulations of the Yakima Indian Nation on the parcel involved.

4.1.2. Enjoin, both preliminary to suit and permanently, defendants, their agents, employees, successors or persons in active concert in participation with them, from any action or permitting any action on the parcel involved contrary to the land use and entry regulations of the Yakima Indian Nation.

4.1.3. Issue a declaratory judgment declaring the rights of the parties regarding land use and entry regulations within the exterior boundaries of the



**Yakima Indian Reservation.**

4.1.4. Grant plaintiff a judgment against all defendants and each of them for the specific damages outlined in 3.22 above.

4.1.5. Grant plaintiff a judgment against all defendants and each of them for reasonable attorney's fees and costs in the prosecution of this action under 42 USC Sec. 1988 and otherwise.

4.1.6. Award such further relief as this Court deems proper.

DATED this 7th day of September, 1983.

/s/ \_\_\_\_\_  
**JAMES B. HOVIS**  
Hovis, Cockrill, Weaver & Bjur  
Attorneys for Confederated Tribes  
and Bands of the Yakima Indian  
Nation, Plaintiff



(Jurat omitted in printing.)

JOHNSON MENINICK, being first sworn,  
deposes and says:

1. I am the Chairman of the Yakima Tribal Council.

2. I am authorized to verify this Complaint for Declaratory and Injunctive Relief and Damages in the captioned matter on behalf of the Yakima Indian Nation.

3. I have read the foregoing Complaint and I know its contents. To the best of my knowledge and belief, all of the statements in the said Complaint are true and correct.

/s/ \_\_\_\_\_  
JOHNSON MENINICK

(Exhibit omitted in printing)

NO. C-83-604-JLQ

SECOND SUPPLEMENTED AFFIDAVIT OF  
DEFENDANT-BRENDALE IN SUPPORT OF HIS  
MOTION FOR RECONSIDERATION

Filed September 19, 1985

(Jurat and title omitted in printing.)

PHILIP BRENDAL, on oath, states:

I am one of the Defendants herein, over the legal age, competent to testify herein, and submit this "Second Supplemental Affidavit" based on my personal knowledge of the facts in this case.

Exhibit "A-1" attached and incorporated herein consists of 23 photographs of cabins and associated out-buildings, all permanent structures, located in the "closed area" of the Yakima Indian Reservation. The pictures were taken between 4/25/84 and 6/30/84 except the photograph of the "Lynch cabin", "Site 13" which was taken in November, 1983. The location of these permanent structures within the "closed area" is shown on the map which is attached and incorporated herein as Exhibit "A-2".

The cabin and barn located at site 7 are on deeded land and owned by Jack Davenport who is not an enrolled Yakima. It is my understanding Mr. Davenport acquired the property in 1979, has access to the property through the Kaiser Butte Guard Station by virtue of a "Tribal Police Commission". Because Mr. Davenport acquired his property after the 1972 BIA closure notice, he is, pursuant to the terms of the notice, not entitled to an entry permit.

It is also my understanding the owner of cabin 1a at site 12 sells groceries for cash or trades groceries for huckleberries during the huckleberry season. From my visual inspection of the campground located at site 12, there also appears to be one and possibly two "snack bars" operated at the site.

These commercial activities conducted from per-

manent structures in the closed area are inconsistent with the Court's finding the area is reserved for cultural and religious activities by tribal members.

Exhibit "B" attached and incorporated herein is the map of a 50-lot subdivision located within the closed area and Yakima County between Satus Creek and Highway 97 in Section 21, Township 18 North, Range 7, E.W.M. The subdivision was created in the late 1960's and one cabin was constructed in the subdivision prior to 1972. After adoption of the 1972 amended zoning regulations, the cabin was destroyed by fire and rebuilt. In addition, at least five (5) mobile homes have been placed on lots in the subdivision since enactment of the amended zoning ordinance. The rebuilding of the cabin and the placement of mobile homes on lots within the subdivision were apparently accomplished without objection from the Tribe even though the cabin and mobile homes are clearly permanent structures which are purportedly prohibited in the closed area.

/s/ \_\_\_\_\_

PHILIP BRENDAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

NO. C-83-724-JLQ

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND DAMAGES

FILED OCTOBER 28, 1983

CONFEDERATED TRIBES AND BANDS OF  
THE YAKIMA INDIAN NATION,  
*Plaintiff,*

v.

COUNTY OF YAKIMA, JIM WHITESIDE,  
GRAHAM TOLLEFSON, CHARLES KLARICH,  
RICHARD F. ANDERWALD, STANLEY  
WILKINSON, JIM GATLIFF, and DICK KELLER,  
*Defendants,*

**FIRST COUNT**

Plaintiff complains against defendants Jim Whiteside, Graham Tollefson, Charles Klarich, Richard F. Anderwald, Stanley Wilkinson, Jim Gatliff and Dick Keller for a first count as follows:

1. Nature of Proceedings:

1.1. Nature of the case. This is an action for declaratory and injunctive relief and for damages brought pursuant to 28 USC Sec. 2201, 28 USC Sec. 1362, and arises under 28 USC Sec. 2201, 42 USC Sec. 1983, 42 USC Sec. 1988, Treaty with the Yakimas, 12 Stat. 951, Enabling Act, 25 Stat. 676, and under Article 1, Section 8, Article 6, Section 2, and the Fourteenth Amendment of the United State Consitutuion, as is hereinafter more fully set forth; and to obtain a determination that an Environmental Impact Statement (EIS) is required under Chapter 43.21C RCW, and enjoin any change in land use until prepared.

1.2. Jurisdiction of this Court. This Court has jurisdiction of this cause pursuant to 28 USC Sec. 1362, because the plaintiff, Confederated Tribes and Bands of the Yakima Indian Nation (hereinafter called "Yakima Indian Nation"), is an Indian tribe or nation with a governing body recognized by the Secretary of Interior, and the matter in controversy arises under the Constitution, laws and treaties of the United States.

Likewise, this Court has jurisdiction of this cause pursuant to 28 USC Sec. 1343 for the deprivation of the constitutional rights, privileges and immunities of plaintiff.

1.3. Pendent jurisdiction of this Court. The action for a determination that preparation of an Environmental Impact Statement (EIS) is required under 43.21C RCW, which is alleged in count two of this complaint and the action for the federal claim, which is alleged in count one of this complaint, are based on the same operative facts, as hereinafter more clearly appears.

Both count one and the federal claim already before this Court in C-83-604-JLQ have as a primary base a determination of a basic federal treaty question requiring a determination by the federal courts.

Judicial economy, convenience and fairness to the parties herein will result if the Court assumes and exercises jurisdiction of the action for determination that an EIS is required which is alleged in count two of this complaint. Likewise, Article III of the Constitution of the United States would require that this matter be determined by a judge having life tenure.

## 2. Parties:

2.1. The Yakima Indian Nation, plaintiff, is a sovereign Indian nation or tribe established by treaty with the United States of America (12 Stat. 951) with a governing body duly recognized by the Secretary of Interior of the United States. Said Yakima Indian Nation, through its governing body, exercises certain treaty-reserved governmental powers within the exterior bound-

aries of the Yakima Indian Reservation (which are described in the Treaty with the Yakimas). These powers will be more particularly and appropriately described in this complaint.

2.2. Defendant Yakima County is a municipal corporation or county of the State of Washington.

2.3. Defendants Jim Whiteside, Graham Tollefson and Charles Klarich, are residents of the County of Yakima, State of Washington, and commissioners of Yakima County.

2.4. Defendant Richard Anderwald is a resident of the County of Yakima, State of Washington, and is the Director of the Planning Department, County of Yakima, State of Washington.

2.5. Defendants Stanley Wilkinson, Jim Gatliff and Dick Keller, are residents of the County of Yakima, State of Washington.

### 3. Facts Relevant to Plaintiff's Request for Relief.

3.1. The Yakima Indian Reservation, described in the Treaty with the Yakimas, was explicitly reserved by the Treaty with the Yakimas "for the exclusive use of said confederated tribes and bands of Indians" now the Yakima Indian Nation. Said treaty likewise explicitly provides that no non-member, excepting those in the employment of the Indian Department, shall "be permitted to reside upon the said reservation without the permission of the tribe, the superintendent or agent".

3.2. The Enabling Act (25 Stat. 676) provides that the State of Washington shall have no jurisdiction over lands within the Yakima Indian Reservation.

3.3. The Yakima Indian Nation has, pursuant to its reserved governmental powers, through its governing body, adopted land-use and zoning regulations regulating land use within the Yakima Indian Reservation. Said land-use regulations except incorporated cities and towns within the Yakima Indian Reservation, but regulate land use in all other parts of the reservation



and the area of controversy described herein.

3.4. On August 24, 1983, defendant Stanley Wilkinson filed an application with the Yakima County Planning Department to subdivide approximately 32 acres into 20 lots, permitting the construction of residences on lands within Section 10, Township 12 North, Range 18, EWM. The size of the lots range from 1.12 acres to 4.5 acres.

3.5. Said parcel, title of which is held in a non-trust status, is within the Yakima Indian Reservation and an area where buildings or other permanent structures for private use on less than five acres are prohibited by land-use regulations of the Yakima Indian Nation.

3.6. Defendant Stanley Wilkinson has not sought the permission of the Yakima Indian Nation to construct such buildings or structures on lots containing area less than five acres.

3.7. All defendants have taken the position that Yakima County has exclusive land-use regulatory power within non-trust and non-restricted lands within the entire Yakima Indian Reservation, without regard to the provisions of the Treaty with the Yakimas and land-use and entry resolutions, ordinances and laws of the Yakima Indian Nation.

3.8. In addition to the governmental and regulatory powers of the Yakima Indian Nation, the Yakima Indian Nation is the beneficial owner of treaty-reserved and otherwise acquired lands and resources within the Yakima Indian Reservation. The members of the Yakima Indian Nation are likewise beneficial owners of lands and resources within the Yakima Indian Reservation.

3.9. The regulation of land use within the exterior boundaries of the Yakima Indian Reservation is necessary to the political integrity of the Yakima Indian Reservation and the health, welfare and safety of the Yakima Indian Nation and its members and residents of



the Yakima Indian Reservation.

3.10. On September 30, 1983, Richard F. Anderwald, as Director of Planning of the County of Yakima, issued a determination that the Wilkinson proposal would have a significant adverse impact on the environment.

3.11. On October 11, 1983, after acceptance of the power and jurisdiction of the County of Yakima to control land use of non-trust and non-restricted lands within the exterior boundaries of the Yakima Indian Reservation, defendant Richard F. Anderwald as Director of Yakima County Planning Department, under color of state law determined that the change in land use of the premises involved herein would not have a significant adverse impact on the environment and issued a declaration of non-significance under the Washington State Environmental Policy Act (SEPA) regarding said proposed land use.

3.12. On October 14, 1983, the plaintiff filed a notice of appeal of this determination with the Yakima County Commissioners alleging that Yakima County did not have jurisdiction or power to regulate or permit land use contrary to the usage permitted by the Yakima Indian Nation and in the alternative that the proposed land use would have significant adverse impact upon the environment and that an EIS is required under SEPA. (RCW 43.21C.030(2).)

3.13. During the hearing of this appeal on October 25, 1983, defendants Jim Whiteside, Graham Tollefson and Charles Klarich, held that under state law they had jurisdiction to determine and regulate land usage within the exterior boundaries of the Yakima Indian Reservation and that under state law and county ordinance they would not hear evidence or argument contesting the exclusive power of the County of Yakima to regulate land use on non-trust or non-restricted lands within the exterior boundaries of the Yakima Indian Reservation. Under this ruling, defendants were foreclosed

and prohibited from presenting evidence or further argument on the land-use power of the Yakima Indian Nation to determine and regulate land use within said Yakima Indian Reservation. Likewise, they determined that rules of practice or procedure do not need to be established to guide determination of said appeal. All of these determinations were made under color of state law by said defendants.

3.14. Said determinations deprived plaintiff of due process under the Fourteenth Amendment of the United States Constitution, were a violation of the Yakima Indian Nation's treaty rights, contrary to the Supremacy Clause of Article 6 of the United States Constitution and invaded the power and political integrity of the Yakima Indian Nation and the Congress of the United States embodied in the Commerce Clause of Article 1 of the United States Constitution, the Enabling Act, Treaty with the Yakimas and federal law.

3.15. After hearing on the appeal, the defendant County Commissioners determined that the proposed land use would not have a significant adverse impact on the environment.

3.16. Defendant County Commissioners Jim Whiteside, Graham Tollefson and Charles Klarich, are continuing under color of state law to regulate and determine land use of the parcel herein involved without regard to Yakima Indian Nation permitted or prohibited land use on the Yakima Indian Reservation. Defendant Stanley Wilkinson is joining with and acting in concert with said defendant Commissioners Jim Whiteside, Graham Tollefson and Charles Klarich, in such action and all defendant seek to impose this change of land use within the Yakima Indian Reservation without obtaining or applying for permission of the Yakima Indian Nation and contrary to the duly promulgated land use and entry regulations of the Yakima Indian Nation.

3.17. Defendant Stanley Wilkinson intends to transfer the parcel involved herein for building sites contrary to the land-use and entry regulations of the Yakima Indian Nation and to use these premises in a manner contrary to the entry and land-use regulations of the Yakima Indian Reservation. The transfer will be made to defendants Jim Gatliff and Dick Keller who will be selling said lots for residential purposes. They are taking this action under color of state law.

3.18. These actions by all defendants are under color of state law and county ordinances promulgated thereunder.

3.19. Said defendants individually and in concert have attempted and continue to impose county land-use regulations and certain land use within the Yakima Indian Reservation contrary to the wishes of the Yakima Indian Nation and land-use and entry regulations promulgated by the Yakima Indian Nation.

3.20. The Congress of the United States has never authorized the State of Washington, or any county thereof, power to permit and regulate land use on any lands within the Yakima Indian Reservation contrary to the land-use and entry regulations of the Yakima Indian Nation and the power to regulate entry and land-use within the Yakima Indian Reservation has been reserved exclusively to the Yakima Indian Nation by the Treaty with the Yakimas and by federal law.

3.21. All of the actions of the defendants are under color of state law, are unlawful and are in violation of the plaintiff's rights, privileges and immunities as guaranteed by the Constitution, laws and treaties of the United States, and by denying plaintiff's right to be heard on the power and jurisdiction question, defendants Jim Whiteside, Graham Tollefson and Charles Klarich have denied plaintiff due process of law.

3.22. As a direct and proximate result of these concerted acts by defendants, and each of them, plaintiff has suffered actual, immediate and continuing

harm. In defendants' assault against the political integrity, health, safety and welfare of the Yakima Indian Nation, they have caused these special damages:

3.22.1. Cost of preparing for and appearing at the County proceedings in a vain attempt to protect their reserved rights, privileges and immunities by establishing under Yakima County's lack of jurisdiction and power to permit and grant land use and entry contrary to the Treaty with the Yakimas and land-use and entry regulations of the Yakima Indian Nation.

3.22.2. Cost of continuing to prepare for and appearing (attorney's fees and other costs) at administrative hearings regarding this proposed action by the defendants.

3.22.3. Extreme mental, emotional and psychological distress caused by these attempted intrusion tactics into the political integrity, health, welfare and safety of the Yakima Indian Nation.

3.22.4. The cost of preparing for and tying this matter (attorney's fees and other costs) to obtain a declaratory judgment and other relief to protect the federally and constitutionally guaranteed rights, privileges and immunities of the Yakima Indian Nation.

The money equivalent of these damages is not ascertainable at this time, because the damage to plaintiff continues. Said amounts will be furnished prior to trial and it is alleged that they exceed \$10,000.00.

3.23. The damage and continuing damage to the plaintiff is irreparable and plaintiff has no adequate remedy at law. This unwarranted and illegal action by defendants strikes at the very heart of the political integrity of the Yakima Indian Nation and its welfare, health and safety. Until resolved, the basic issue is a continuing one throughout the entire Yakima Indian Reservation that exceeds the principal case and has a continuing effect on the political integrity of the

Yakima Indian Nation, its health, welfare and safety, and the enjoyment of treaty-reserved and constitutionally-guaranteed rights, immunities and privileges. Until resolved, it will impede the general welfare and the exercise of the governmental function of the Yakima Indian Nation. Speedy granting of restraints against defendants is in order.

## SECOND COUNT

Plaintiff complains against Yakima County, Jim Whiteside, Graham Tollefson, Charles Klarich, Richard F. Anderwald, Stanley Wilkinson, Jim Gatliff and Dick Keller, and for a second claim for relief alleges:

4.1. Plaintiff incorporates paragraphs 1, 1.1, 1.3, and 2 through 3.23 of its first count against defendants and makes such paragraphs a part hereof.

4.2. The proposed project is major action that will have a significant adverse environmental impact on the area of proposed development. Under the laws of the State of Washington and particularly Chapter 43.21C RCW, an Environmental Impact Statement (EIS) is required to be prepared. No such EIS is being prepared.

4.3. Construction has not yet begun on the proposed project. The preparation of an EIS can therefore still avoid or minimize the adverse environmental impact of such project on the affected area.

4.4 Defendants have not given actual consideration of the environmental impact of the proposed action as required by state law in making their determination that no substantial environmental impact would result. *Lassila v. Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54 (1979).

4.5. Defendant Yakima County has not promulgated rules of practice and procedure regarding appeals of administrative determination as required by Chapter 41.23C RCW and regulations promulgated thereunder.



4.6 Defendants have not complied with the mandatory requirement to consult with the Yakima Indian Nation before making environmental determinations under Chapter 43.21C as required by state law. *SAVE v. Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978); RCW 43.21C.030; WAC 197-10-040(7), (23).

4.7. If defendants are permitted to proceed with the project without complying with the provisions of Chapter 43.21C RCW, plaintiff will suffer great and irreparable injury for which plaintiff has no adequate remedy at law.

## 5. Relief Requested.

5.1. Wherefore, on plaintiff's first claim against defendants Jim Whiteside, Graham Tollefson, Charles Klarich, Richard F. Anderwald, Stanley Wilkinson, Jim Gatliff and Dick Keller, plaintiff prays that this Court

5.1.1. Issue a temporary restraining order on this complaint, record and roll, restraining defendants from permitting, or to take any action toward permitting, land use contrary to the land-use and entry regulations of the Yakima Indian Nation on the parcel involved;

5.1.2. Enjoin, both preliminary to suit and permanently, these defendants, their agents, employees, successors or persons in active concert in participation with them, from any action or permitting any action on the parcel involved contrary to the land-use and entry regulations of the Yakima Indian Nation;

5.1.3. Issue a declaratory judgment declaring the rights of the parties regarding land-use and entry regulations within the exterior boundaries of the Yakima Indian Reservation;

5.1.4. Grant plaintiff a judgment against all these defendants and each of them for the specific damages outlined in 3.22 above;

5.1.5. Grant plaintiff a judgment against all these defendants and each of them for reasonable attorney's fees and costs in the prosecution of this action under 42 USC Sec. 1988 and otherwise;

5.1.6 Award such further relief as this Court deems proper.

5.2. Wherefore, on plaintiff's second claim against defendants Yakima County, Jim Whiteside, Graham Tollefson, Charles Klarich, Richard F. Anderwald, Stanley Wilkinson, Jim Gatliff and Dick Keller, plaintiff prays as follows:

5.2.1. Issue a temporary restraining order on this complaint, record and roll, restraining defendants from permitting, or to take any action towards permitting contemplated land use without the preparation of an EIS;

5.2.2. Enjoin, both preliminary to suit and permanently, defendants, their agents, employees, successors or persons in active concert in participation with them, from any action or permitting any action on the parcel involved, before the preparation of and EIS;

5.2.3. Issue a declaratory judgment declaring the rights of the parties regarding Chapter 43.21C RCW;

5.2.4. Award such further relief as this Court deems proper.

DATED this 27th day of October, 1983.

/s/

JAMES B. HOVIS

Hovis, Cockrill, Weaver & Bjur  
Attorneys for the Confederated  
Tribes and Bands of the Yakima  
Indian Nation, Plaintiff



(Jurat omitted in printing)

JOHNSON MENINICK, being first sworn,  
deposes and says:

1. I am the Chairman of the Yakima Tribal Council.

2. I am authorized to verify this Complaint for Declaratory and Injunctive Relief and Damages in the captioned matter on behalf of the Yakima Indian Nation.

3. I have read the foregoing Complaint and I know its contents. To the best of my knowledge and belief, all of the statements in the said Complaint are true and correct.

/s/ \_\_\_\_\_  
JOHNSON MENINICK

# AMENDED ZONING REGULATIONS OF THE YAKIMA INDIAN NATION

\* \* \* \*

## RESOLUTION T-98-72

WHEREAS, by the 'Treaty with the Yakimas', (12 Stat. 951) the Yakima Indian Reservation was set aside for the use of the Yakima Indian Nation, and covenanted that "no white man shall be permitted to reside thereon without permission of the tribe and of the Superintendent of Indian Affairs or Indian Agent"; and

WHEREAS, implicit in that treaty is the sovereign power to regulate the use of lands within the exterior boundaries of the reservation in a proper zoning and planning scheme; and

WHEREAS, the Attorney General of the United States, 23 OP.A.G. 214, has ruled that

"the legal right to purchase land within an Indian nation gives to the purchasers no right of exemption from the law of such nation . . . these nations (are fully authorized) to absolutely exclude outsiders, or to permit their residence or business upon such terms as they may choose to impose . . . "

and

WHEREAS, the Solicitor of the United States Department of the Interior, 55I.D. 14, has ruled that

"over all the land of the reservation, whether owned by the tribe, by members thereof, or by outsiders the tribe has the sovereign power of determining the conditions upon which persons shall be permitted to enter its domain, to reside therein, and to do business . . . "

which principle has been sustained by the Supreme Court of the United States, see 'Morris v. Hitchcock,' 194 U.S. 384, and other courts; and

WHEREAS, it is necessary to zone and plan regarding both trust and non-trust properties on the reservation; and

WHEREAS, pending further extensive planning it is necessary to provide a basic zoning ordinance which will coordinate with other zoning authorities; and

WHEREAS, due to the increasing complexity of land use within the exterior boundaries of the Yakima Reservation, it is necessary to amend tribal zoning ordinance T-16-71; and

NOW, THEREFORE, BE IT RESOLVED by the Yakima Tribal Council meeting in special session at the Yakima Indian Agency; Toppenish, Washington; a quorum being present, as follows:

#### SECTION 1. TITLE

This ordinance shall be known as the AMENDED ZONING ORDINANCE of the Yakima Indian Nation.

#### SECTION 2. PURPOSE

The controls as set forth in this ordinance are deemed necessary in order to encourage the most appropriate use of the land; to protect the social and economic stability of residential, agriculture, commercial, industrial, forest, reserved and other areas within the reservation, and to assure the orderly development of such areas; and; to obviate the menace to the public safety resulting from the improper location of buildings and the uses thereof, and the establishment of land uses along primary highways in such a manner as to cause interference with existing and proposed traffic movement on said highways; and to otherwise promote the public health, safety, morals and general welfare in accordance with the rights reserved by the Yakima Indian Nation in the 'Treaty with the Yakimas' (12 Stat. 951).

#### SECTION 3. ESTABLISHMENT OF DISTRICTS: PROVISION FOR OFFICIAL ZONING MAP

1. Official Zoning Map: the Yakima Indian Reservation is hereby divided into zones or use districts, as shown in the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance.

The Official Zoning Map comprised of several sections shall be identified by the signature of the Chairman of the Tribal Council, together with the date of the adoption of this ordinance.

If in accordance with the provisions of this ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made on the Official Zoning Map promptly after the amendment has been approved by the Tribal Council. The amending ordinance shall provide that such changes and amendments shall not become effective until they have been duly entered upon the Official Zoning Map. No amendment to this ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such changes and entry has been made on such map.

No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided by applicable law.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published the Official Zoning Map which shall be located in the office of the Tribal Chairman, (with a certified copy located in the Planning Office) shall be the final authority as to the current zoning status of land in the Yakima Reservation.

2. Replacement of the Official Zoning Map: In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Tribal Council may by resolution adopt a new Official Zoning map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official

Zoning Map, but no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof.

#### SECTION 4. INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;

2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

3. Boundaries indicated as approximately following city limits shall be construed as following city limits;

4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;

5. Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following center lines of streams, rivers, canals, lakes or other bodies of water shall be construed in follow such center lines;

6. Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 5 shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

7. Where physical or cultural feature existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 1 through 6, the Board of Adjustment shall interpret the district boundaries.

## SECTION 5. NON-CONFORMING LOTS, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, AND NON-CONFORMING USES OF STRUCTURES AND LAND

1. Intent: Within the districts established by this ordinance or amendments that may later be adopted there exist lots, structures, and uses of land and structures which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment.

It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

A non-conforming structure, a non-conforming use of land, or an non-conforming use of a structure and land shall not be extended or enlarged after passage of this ordinance by attachment on a building a premises or additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been diligently carried on. Actual construction materials in permanent position and fastened in a permanent manner except that where demolition or removal of an existing building has been substantially



begun preparatory to rebuilding, such demolition or removal shall be diligently carried on until completion of the building involved.

2. **Non-Conforming Lots of Record:** In any district in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this ordinance, a single family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of area, width, and yard requirements shall be obtained only through action of the Board of Adjustment.

If two or more lots or combinations of lots and portions of lots with continuous frontage are in single ownership or record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area established by this ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and not portion of said parcel shall be used or sold which does not meet lot width and area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this ordinance.

3. **Non-Conforming Uses of Land:** Where, at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended, such use may be continued, so long as it re-



mains otherwise lawful, subject to the following provisions:

- a) No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area land than was occupied at the effective date of adoption or amendment of this ordinance;
- b) No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance;
- c) If any such non-conforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

4. Non-Conforming Structure: Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason or restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a) No such structure may be enlarged or altered in a way which increases its non-conformity;
- b) Should such structure be destroyed by any means to an extend of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance;
- c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

5. Non-Conforming Uses of Structure and Land: If a lawful structure and land in combination, exists at the

effective date of adoption or amendment of his ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise, subject to the following provisions:

- a) No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered in any way except in changing the use of the structure to a use permitted in the district in which it is located.
- b) Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy and land outside of such building;
- c) If no structural alterations are made, any non-conforming use of a structure and land may be changed to another non-conforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate to the district than the existing non-conforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this ordinance;
- d) Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the non-conforming use may not thereafter be resumed;
- e) When a non-conforming use of a structure, or

structure and land in combination, is discontinued or abandoned for twelve (12) consecutive months, the structure, or structure and land in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located;

f) Where non-conforming use status applies to the structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land which shall not thereafter be used except in conformance with the regulations of the district in which it is located.

6. Repairs and Maintenance: On any building devoted in whole or in part to any non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten (10) percent of the current replacement value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this ordinance shall not be increased.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order to such official.

7. Uses Under Special Exception Provisions Not Non-Conforming Uses: Any use for which a conditional use permit or a special property use permit is issued, as provided in this ordinance, shall not be deemed a non-conforming use in such district.

## SECTION 6. SUPPLEMENTARY USE DISTRICT REGULATIONS

1. Vision Clearance at Intersections: All corner lots at intersections or railroads shall maintain for safety vi-

sion purposes a triangular area, one angle of which shall be formed by the lot lines adjacent to the street or railroad right-of-way. The sides of such triangle forming the corner angle shall be thirty (30) feet in length measured along the sides of the aforementioned angle. The third side of said triangle shall be a straight line connecting the last two mentioned points. Within the area comprising said triangle nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between the heights of two and one half ( $2\frac{1}{2}$ ) and ten (10) feet above the center line grades of intersecting streets and/or railroads.

2. Swimming Pools: In all districts a three (3) foot setback from the side and rear property lines shall be maintained and the area around the pool shall be enclosed by a protective fence not less than four (4) feet in height.

## SECTION 7. ADMINISTRATION AND ENFORCEMENT — BUILDING PERMITS AND CERTIFICATES OF ZONING COMPLIANCE

1. Administration and Enforcement: The Building Official and/or the Planning Director or their duly authorized agents, as administrative official, shall administer and enforce this ordinance. If the administrative official shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to insure compliance with or to prevent violation of its provisions.

2. Building Permits Required: No building shall be erected, moved, added to, or structurally altered without a permit therefor, issued by the administrative official. No building permit shall be issued except in con-

formity with the provisions of this ordinance, except after written order from the Board of Adjustment.

3. Application for Building Permit: All applications for building permits shall be in writing on the form to be supplied by the Planning Department. The application shall include the legal description of the land, actual dimensions and shape of the lot to be built upon, the exact size and locations on the lot of buildings already existing if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the administrative official, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, house-keeping units, or rental units the building is designed to accommodate, conditions existing on the lot including but not limited to a soil log and a percolation test results, and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this ordinance.

4. Expiration of Building Permit: If the work described in any building permit has not begun within 90 days from the date of issuance thereof, said permit shall expire; it shall be cancelled by the administrative official, and written notice thereof shall be given to the persons affected.

If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, said permit shall expire and be cancelled by the administrative official, and written notice thereof, shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

5. Construction and Use to be Provided in Application, Plans and Permits: Building permits issued on the basis of plans and applications approved by the admini-



strative official authorize only the applications, and no other use, arrangement, or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance, and punishable as provided by Section 16 hereof.

#### SECTION 8. BOARD OF ADJUSTMENT

1. The Yakima Tribal Council is hereby designated as the Board of Adjustment.

2. Organization: When issues over which the Board has jurisdiction are pending upon it calendar, a meeting shall be called within thirty (30) days. All meetings shall be open to the public.

The Board of Adjustment shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings and determinations.

3. Hearings and Appeals Notices: Appeals to the Board of Adjustment concerning interpretation of administration of this ordinance may be taken by any person aggrieved or by any officer or bureau of the Yakima Indian Nation affected by any decision of the administrative official. Such appeals shall be taken within a reasonable time, not to exceed twenty (20) days, by filing with the administrative official and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative official shall forthwith transmit to the Board all papers constituting the record upon which the action was taken from.

The Board of Adjustment shall fix a reasonable time for the hearing of an appeal, give notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

4. Stay of Proceedings: An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him, that by reason of facts



stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such cases, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment on application, on notice to the administrative official from whom the appeal is taken on due cause shown.

## **SECTION 9. THE BOARD OF ADJUSTMENT: POWERS AND DUTIES:**

The Board of Adjustment shall have the following powers and duties:

1. **Administrative Review:** To hear and decide appeals where it is alleged that is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this ordinance.

2. **Special Exception: (Conditional Use Permits, Special Property Use Permits), Conditions Governing Applications, Procedure:** To hear and decide only such exceptions as the Board of Adjustment is specifically authorized to pass on by the terms of this ordinance; to decide such questions are involved in determining whether special exceptions should be granted; and to grant special exceptions with such safeguards and conditions as are appropriate under this ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this ordinance. A special exception shall not be granted by the Board of Adjustment unless and until;

a) A written application for a special exception shall be submitted to the Board of Adjustment and shall include the following information concerning the property for which the application is being made:

1. Type of use
2. Legal description of property
3. Name and address of legal power

4. Names and address of owners of record of all property within a radius of three hundred (300) feet of the exterior boundaries of subject property
5. Name and address of person submitting application

b) Upon the filing of an application for a special exception, the Board of Adjustment shall set the time and place for a public hearing on such matter, and written notice thereof shall be addressed through the United States mail to all property owners of record within a radius of three hundred (300) feet of the exterior boundaries of subject property. The written notice shall be mailed not less than twelve (12) days prior to the hearing.

The owner of the property for which the special exception is sought shall be notified of the hearing by mail. Notice of such hearing shall be given by publication of at least one notice not less than twelve (12) days prior to the hearing in a newspaper of general circulation within the county, and by posting at Yakima Indian Agency for not less than twelve (12) days prior to the hearing.

c) The public hearing shall be held. Any party may appear in person or by agent or attorney, designated as such in writing, and filed with the Board prior to the hearing.

d) The Board of Adjustment shall make a finding that is empowered under the section of this ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.

In granting any special exception, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when

made a part of the terms under which the special exception is granted, shall be deemed a violation of this ordinance and punishable under Section 16 of this ordinance. The Board of Adjustment shall prescribe a time limit which the action for which the special exception is required shall be begun or completed, or both. Failure to begin or complete, or both, such action, within the time limit set shall void the special exception.

3. Variances, Conditions Governing Applications, Procedures: To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

a) A written application for a variance is submitted demonstrating:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in same district;
2. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
3. That the special conditions and circumstances do not result from the actions of the applicant;
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

- b) Notice of public hearing shall be given as in Section 9 (2[b]) above;
- c) The public hearing shall be held. Any party may appear in person or by agent or attorney designated as such in writing and filed with the Board prior to the hearings;
- d) The Board of Adjustment shall make findings that the requirements of Section 9(3[a]) have been met by the applicant for a variance;
- e) The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- f) The Board of Adjustment shall further make a finding that the granting of a variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In granting a variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 16 of this ordinance.

4. Decisions of the Board of Adjustment: In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have powers of the administrative official from whom the appeal is taken.

The concurring vote of a majority of members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

#### **SECTION 10. APPEALS FROM THE BOARD OF ADJUSTMENT**

Nothing in this ordinance shall be construed to be a waiver of sovereign immunity by the Yakima Indian Nation, and its officers and agents.

#### **SECTION 11. DUTIES OF ADMINISTRATIVE OFFICIAL, BOARD OF ADJUSTMENT, AND COURTS, ON MATTERS OF APPEAL**

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrative official, and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the administrative official.

#### **SECTION 12. SCHEDULE OF FEES, CHARGES AND EXPENSES**

The Board of Adjustment may establish a schedule of fees, charges and expenses, and a collection procedure, for building permits, appeals, and other matters pertaining to this ordinance.

#### **SECTION 13. AMENDMENTS**

1. The regulations, restrictions and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or repealed by action of the Tribal Council after a recommendation thereon from the Planning Commission and after a public hearing. An amendment, supplement or change may be initiated by the Tribal Council, the Planning Commission, or by a petition of the property owners.



2. The owner of any property may petition the Planning Commission for a change in use districts classification. Any person desiring a reclassification of any property shall file a petition at least fourteen (14) days before the Planning Commission meeting at which his application is to be considered. The petition shall be on a form provided by the Planning Commission and shall convey the following information:

- a) Legal description of property to be reclassified;
- b) Signature of owner or owners of property;
- c) Names, addresses, and legal description of the owners of all property lying within a distance of 300 feet (streets and alleys included) of the proposed reclassification;
- d) Such other information as the Planning Commission may require to clarify the application.

The signature of any person or persons having a contract right as Purchaser, to receive title to any lot or parcel of property upon completion of the purchase price thereof shall for the purpose of this ordinance be deemed the signature of the owner of such property provided that said person or persons state in writing over their signatures that they are purchasing the property in question under the contract.

With each petition for a use district reclassification there shall be paid a fee as may be established in Section 12 to cover costs incurred by the Yakima Nation in processing the petition.

#### **SECTION 14. PROVISIONS OF ORDINANCE DECLARED TO BE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals or general welfare. Whatever the requirements of this ordinance are at variance with the require-



ments of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standards, shall govern.

## SECTION 15. COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the administrative official. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this ordinance.

## SECTION 16. PENALTIES FOR VIOLATION

All uses of property not in conformity with this resolution, shall be enjoined and in extreme cases the violators excluded from the Yakima Indian Reservation.

## SECTION 17. SEPARABILITY CLAUSE

Should any section or provisions of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

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## SECTION 19. (A) AGRICULTURAL:

The (A) Agricultural district is established as a district in which the principal use of the land is for agricultural purposes.

In order that (A) Agriculture district shall further promote the general purpose of this ordinance, the specific intent of this district is:

- a) To assure that those portions of the Reservation containing prime agricultural soils will be

preserved for agricultural purposes;

- b) To encourage the use and preservation of those limited and irreplaceable portions of the Reservation which contain the proper combination of soil and topographical characteristics for intense agricultural development;
- c) To prohibit any uses of the land which would interfere with the development or continuation of agricultural uses in this district;
- d) To establish minimal development standards which will assure a continuation of the open and rural character of the district and to permit only those uses and activities which are compatible with this rural character.

The following regulations shall apply to the Agricultural District:

1. Use: No building, structure, or land shall be used and no building or structure shall be hereafter erected, altered, enlarged or maintained in this district except for the following uses:

- a) Agriculture, floriculture, horticulture, general farming, dairying, poultry raising, stock raising and other agricultural land uses, buildings and activities, except farms for disposal of garbage and offal by feeding same to livestock;
- b) Plants for the processing and storage of agricultural products, such as fruit packing plants, canneries, milk plants, warehouses, fruit and vegetable cold storage plants, etc.;
- c) Stands for the display and sale of products raised or grown on the premises when located not less than twenty (20) feet from the right of way of any public street or highway;
- d) Accessory buildings ordinarily appurtenant to

the conduct of farming and agriculture and when located not less than seventy-five (75) feet from any public street or highway;

- e) Public parks and playgrounds;
- f) Single-family dwellings;
- g) Home occupations;
- h) Uses customarily incidental to any of the above uses;
- i) Special property uses specifically allowed in this district as listed in Section 25.

## 2. Area Regulations:

- a) Lot Size: The minimum lot size in this district shall be 5 acres.

- b) Front: There shall be a minimum set-back for all buildings or other structures from the centerline of right-of-way as follows:

<u>Right-of Way, Public</u>	<u>Set-Back</u>
Major or Secondary Arterials	60 feet
Collector or Access Roads	50 feet

<u>Right-of-Way, Private</u>	
Any road, lane, street, or other access way in private ownership	50 feet
<u>Any waterway</u>	200 feet

There shall be a minimum set-back for facilities belonging to any individual, private or public irrigation or drainage district, company or corporation, or any private or public utility, except those located within the right-of-way by franchise from the Yakima Indian Nation, from the centerline or rights-of-way as follows:

<u>Rights-of-Way, Public</u>	Set-Back
Major or Secondary Arterials	40 feet
Collector or Access Roads	30 feet
<u>Rights-of-Way, Private</u>	30 feet

Side: There shall be a side set-back of not less than ten (10) feet on each side of a structure.

### 3. Other Regulations:

- a) Signs: The following signs only shall be permitted in this district:
  1. One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease, rent, or hire of only the particular building, property or premises upon which displayed.
  2. Signs advertising the sale or promotion of agricultural products raised or grown on the premises shall not exceed a total area of one hundred (100) square feet.
  3. Name plates not exceeding two (2) square feet in area bearing only the name and occupation of the occupant.

## SECTION 20. (R) RESIDENTIAL:

The (R) Residential district is established as a district in which the principal use of the land is for residential construction and land development of varying densities designed to meet contemporary building and living standards.

In order that the (R) Residential district shall further promote the general purposes of this ordinance, the specific intent of this district is:

- a) To encourage the construction of, and the continued use of the land for various residential purposes.

- b) To prohibit commercial and industrial uses of the land and to prohibit any other uses which would substantially interfere with the development or construction of residential uses;
- c) To encourage the discontinuance of existing uses which would not be permitted as new uses under the provisions of this ordinance;
- d) To prohibit any use which because of its character or size creates requirements and costs for public services, such as police and fire protection, water supply and sewage facilities, substantially in excess of such requirements and costs if the district were developed solely for residential purposes.

The following regulations shall apply to the Residential Districts:

1. Use: No building, structure, or land shall be used and no building or structure shall be hereafter erected, altered, enlarged or maintained in this district except for the following uses:

- a) Single-family dwellings
- b) Two-family dwellings
- c) Multiple-family dwellings and apartment houses
- d) Public parks and playgrounds
- e) Farming, gardening, orchards and nurseries, provided that no retail or wholesale business office is maintained, and provided that no poultry or livestock, other than normal household pets, shall be housed within one hundred (100) feet of any residence other than the dwelling on the same lot.

- f) Home occupations as defined in Section 18.
- g) Accessory buildings such as are ordinarily appurtenant to the permitted uses in this district.
- h) Where the side of a lot abuts on a Commercial or Industrial district, the following transitional uses are permitted provided they do not extend more than one hundred (100) feet into the more restricted (residential) district:
  - 1. Medical or dental offices and clinics;
  - 2. Other uses of a transitional nature as determined by the Planning Commission. These transitional uses shall conform to all other requirements of this ordinance which apply.
- i) Special Property uses specifically allowed in this district as listed in Section 25.

## 2. Area Regulations:

- a) Lot size and percentage of coverage:
  - 1. Single family dwelling — no single family dwelling shall hereafter be erected upon any lot or plot having an area of less than seven thousand two hundred (7200) square feet, or an average width of less than sixty (60) feet. Nor shall the building, including its accessory buildings, cover more than fifty (50) percent of the total lot area.
  - 2. Two-family dwelling — No two-family dwelling shall hereafter be erected upon any lot or having an area of less than eight thousand two-hundred (8200) square feet, or an average width of less than eighty



(80) feet. Nor shall the building, including its accessory buildings, occupy or cover more than fifty (50) per cent of the total lot area.

3. Multiple-family dwellings — No multiple family dwelling of three (3) or more residential units shall hereafter be erected upon any lot or plot having an area of less than nine thousand two hundred (9200) square feet, or an average width of less than ninety (90) feet. Nor shall an apartment or multiple-family dwelling of any type be erected in such a manner as to provide less than two thousand (2000) square feet of land area for each living unit including the land on which the unit is built. No multiple family dwelling or apartment, including its accessory buildings, shall occupy or cover more than fifty (50) percent of the total lot area.

- b) Larger lot size for individual water and sewage systems or community water and sewage systems may be required by enactment of a Tribal Health Code, or by determination of the administrative official.

- c) Set-back requirements:

1. Front: There shall be a minimum set-back for all buildings or other structures from the center-line of rights-of-way as follows:

<u>Rights-of-Way, Public</u>	Set-Back
Major or Secondary arterials	60 feet
Collector or access roads	50 feet
<u>Rights-of-Way, Private</u>	

Any road, lane, street, or other access way in private ownership	50 feet
Any Waterway	200 feet

There shall be minimum set-back for facilities belonging to any individual, private or public irrigation or drainage district, company or corporation, or any private or public utility, except those located within the right of way by franchise from the Yakima Indian Nation from the centerline or rights of way as follows:

<u>Rights-of-Way, Public</u>	<u>Set-Back</u>
Major or Secondary arterials	40 feet
Collector or access roads	30 feet
<u>Rights-of-Way, Private</u>	30 feet

2. Side: There shall be a side set-back of not less than five (5) feet on each side of a dwelling except that a set-back on a corner lot shall not be less than ten (10) feet along the flanking or side street line.
3. Rear: There shall be a rear set-back of not less than fifteen (15) feet in the rear of each dwelling. Accessory building may be located in the rear of each dwelling. Accessory buildings may be located in the rear yard provided they shall maintain a set-back of five (5) feet from any lot line.
- d) Height requirements: No building shall exceed a height of forty-five (45) feet or three stories, whichever is the lesser.

### 3. Other Regulations:

- 1) Parking requirements: Parking and loading space shall be provided as specified by Section

26.

- b) Signs: The following signs only shall be permitted in this district:
1. One (1) unlighted sign not exceeding six (6) square feet in area pertaining only to the sale, lease, rent, or hire of only the particular building, property or premises upon which displayed.
  2. A sign advertising the sale of agricultural products raised or grown on the premises not to exceed six (6) square feet in area.
  3. Name plates not exceeding two (2) square feet in area bearing only the name and occupation of the occupants, and when so used shall be located on the property and off the right-of-way.
  4. In transitional areas a sign, illuminated or otherwise but not of a flashing intermittent type, with a maximum area of eighteen (18) square feet shall be permitted. Any external sign displayed shall pertain only to the use conducted within the building and shall be mounted flat against the building. Artificially illuminated signs shall not be permitted if they face an abutting residential district.

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### SECTION 23. (RA) RESERVATION RESTRICTED AREA

The Restricted Area District is established to insure continuation of the Tribal Natural Resources and to insure the Treaty right of tribal members to have an area in which they may camp, hunt, fish, and gather roots and berries in the tradition of their culture. This District

is therefore closed to all non-tribal members other than persons bearing permits. Upon the issuance of a permit by the Tribal Council with respect to tribal lands, roads and resources, the Superintendent of the Yakima Agency will issue permits for travel on roads in the closed areas only to present owners of record of lands within the closed area as of May 6, 1972, to persons or firms doing business with the Yakima Nation or the Bureau of Indian Affairs; employees of the Yakima Nation and the Bureau of Indian Affairs; and to others who are engaged in activities of direct benefit to the Yakima Nation.

In order that the nature of the restricted area be protected only the following uses will be permitted:

1. Harvesting wild crops
2. Grazing, timber production or open field crops
3. Hunting or fishing by Tribal members
4. Camping in temporary structures
5. Tribal camps for the education and recreation of tribal members
6. Construction and occupancy of buildings and structures constructed by the Yakima Nation or the Bureau of Indian Affairs to be used in the furtherance of Tribal resources.
7. No building or other permanent structure or any appurtenances thereto other than those allowed in Sections 1-6 above shall be allowed in this district.
8. Any structure which is authorized in Section 1-6 above shall be set back 200 feet from any waterway.

## SECTION 24. (PD) PLANNED DEVELOPMENT

1. Purpose: The purpose of this section providing for

the establishment of a Planned Development District, is to:

- a) Encourage flexibility in design and development that will encourage a more creative approach in the development of land, and which will result in a more efficient, aesthetic and desirable use of the land.
- b) Permit flexibility in design, placement of buildings, use of required open spaces, circulation facilities, off-street parking areas and otherwise to better utilize the potentials of sites characterized by special features of geography, topography, size or shape.
- c) Facilitate the adequate and economical provision of streets and utilities.
- d) Preserve the natural and scenic qualities of open areas.

2. Notification of Intent: The applicant for a Planned Development project to be governed by the provisions of this section shall file with the Planning Commission a preliminary notice of the applicant's intention to apply for a Planned Development District, giving such preliminary information concerning the proposed project as may be requested by the Planning Commission on forms furnished by them. Such preliminary notice shall be signed by the owner of all property to be involved in the Planned Development District, if such property is owned by one person, or by all persons claiming any right, title or interest of record in and to such property if it is owned by more than one person.

3. Preliminary Development Plan and Program: After filing the preliminary notice required by Subsection 2 above, the applicant for a Planned Development District shall file with the Planning Commission a preliminary plan and program for the area within the

boundry of the project, which plan and program shall consist of the following:

- a) A dimensional map drawn to a scale of not less than 1 inch to 100 feet, depicting the following:
  1. The boundaries of the site
  2. Names and dimensions of all existing streets bounding or touching the site of the proposed location
  3. Horizontal, vertical dimensions and types of all buildings and structures proposed to be located on the site
  4. Proposed location and dimension of "common open space"
  5. Proposed public dedications
  6. Location, dimension and design of off-street parking facilities, showing points of ingress and egress from the site
  7. Location and direction bearing of all major physiographic features such as railroads, drainage canals and shorelines
  8. Existing topographic contours at intervals of not more than five (5) feet, together with proposed grading and drainage landscaping
  9. Proposed land uses and densities
  10. Pedestrian and vehicular circulation pattern
- b) A written program for development setting out detailed information concerning the following subjects as they may be involved in or provided for by the Planned Development project:



1. Proposed ownership pattern
2. Operation and maintenance proposals, i.e., homes, associations, condominium, co-op or other
3. Waste disposal facilities
4. Lighting
5. Water supply
6. Public transportation
7. Community facilities
8. General time table of development

4. Informal Review by Planning Commission: The Planning Commission shall informally review the preliminary development plan and program and may recommend additions or modifications to, or other changes in, the proposed plan or program.

5. Rezone Application: Upon the completion of the informal review of the preliminary development plan and program by the Planning Commission, the applicant may submit a verified rezone application requesting a change of zone to Planned Development District pursuant to Section 13 of this ordinance.

6. Rezone Hearings and Findings: The application for rezone to a Planned Development District shall be heard before the Planning Commission of the Yakima Indian Nation at a public hearing within the time and in the manner provided by Section 13 of the Yakima Indian Nation Amended Zoning Ordinance. The recommendation of the Planning Commission to approve or deny the application shall be based on the following criteria:

- a) Substantial conformance to this Amended Zoning Ordinance;
- b) The proposal's harmony with the surrounding area, or its potential future use;

- c) The system of ownership and means of development, preserving and maintaining space;
- d) The adequacy of the size of the proposed district to accommodate the contemplated development.

7. Decision of the Planning Commission — Subsequent Procedure:

- a) At the conclusion of the hearing by the Planning Commission, as provided for in Section 13, the Planning Commission shall adopt a motion on the affirmative vote of a majority of its voting members which shall recommend to the Tribal Council that the application for rezone to Planned Development District be either approved, denied, or approved with modifications specified by the Planning Commission in its motion. Within ten calendar days from the date of such action, the Secretary of the Planning Commission shall mail the applicant at the address shown on the rezone application, notification of the Planning Commission's recommendations.
- b) The procedure provided for by Section 13 of the Yakima Indian Nation Amended Zoning Ordinance shall be followed to afford a review by the Tribal Council of the Planning Commission's recommendation, and to provide for the granting or denying by the Tribal Council of the rezone application.

8. Final Development Plan and Program: Upon being granted a rezone by action of the Tribal Council, the applicant shall prepare a final development plan and program containing the enumerated elements and meet-

ing the density, open space and other requirements listed below.

a) Plan Elements

1. Existing maps drawn to a scale of not less than 1 inch to 100 feet and proposed contour map
2. Location, with the names, of all existing and proposed streets, public ways, railroad and utility rights-of-way, parks or other open spaces and all land uses within 500 feet of the boundary of the development
3. Existing sewers, water mains, and other underground facilities within and adjacent to the development and their certified capacities
4. Proposed sewer or other waste disposal facilities, water mains and other underground utilities
5. Preliminary subdivision plan
6. Proposed land use plan
7. Community facilities plan
8. Location and amount of open space
9. Traffic flow plan
10. Location and dimension of walks, trails or easements
11. Location, arrangement, number and dimensions of truck loading and unloading spaces and docks
12. Location, arrangement, number and dimensions of auto garages and parking spaces, width of aisles, bays and angles of parking
13. Preliminary plans, elevation of typical building and/or structures, indicating

general height, bulk and number of dwelling units

14. Approximate location, height, and materials of all walls, fences and screen plantings
15. Indication of stages of development

b) Program Elements

1. Statement of goal and objectives, i.e., why it would be in the public interest and be consistent with this Amended Zoning Ordinance
2. Evidence of resources available to develop the project
3. Tables showing total number of acres, distribution of area by use, percent designated for each dwelling, type of off-street parking, streets, parks, playgrounds, schools and open spaces
4. Tables indicating over-all densities and density-by-dwelling-types, and any proposal for the limitations of density
5. Restrictive covenants, other than those relating to retention and maintenance of common open space

- c) Project Densities: The Planning Commission may recommend approval of a population density for a planned development even though such density may be greater than that specified in this Amended Zoning Ordinance for the area containing the planned development, if, in the opinion of the Planning Commission, the design of the planned development will not result in inconvenient or unsafe access to the planned development or excessive burden on parks, recreation area,

schools and other public facilities which serve or are proposed to serve the planned development.

d) Common Open Space Requirements:

1. Common Open Space in a Planned Development

- a. The location, shape, size and character of the open space must be suitable for the Planned Development
- b. Common open space must be suited for amenity or recreational purposes. The uses authorized for the common open space must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography and number and type of dwelling units to be provided
- c. Common open space must be suitably improved for its intended use, but common open space containing natural features may be left unimproved. The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for common open space and must conserve and enhance the amenities of the common open space in regards to its topography and unimproved condition.

2. The development schedule, which is part of the development plan, must coordinate improvement of common open space, construction of buildings, struc-

tures and improvements in the common open space, and the construction of residential dwellings in the planned development.

e) Retention and Maintenance of Common Open Space:

1. The final development plan and program shall include a provision approved by the Planning Commission as being sufficient to assure permanent retention and maintenance of the common open space in a Planned Development District. Such assurance may be in the form of restrictive covenants, dedication of open space to the public where such dedication will be accepted by the Tribal Council, an undertaking by an association of owners of the property within the Planned Development District, or in any other form or by any other method approved by the Planning Commission as being practical and legally sufficient to assure the permanent retention and maintenance of the common open spaces. All legal documents to carry out the plan and program in this regard shall be filed by the applicant with the final development plan and program, and shall be subject to approval as form by the Trial Attorney. All such plans and programs shall contain provisions whereby the Yakima Indian Nation will be vested with the right to enforce the permanent retention and maintenance of the common open space and further that in the event the common open space is permitted to deteriorate, or is not maintained in a condition consistent with the approved plan and program, then in such event that the Yakima Indian Nation may at its option cause necessary maintenance to be performed and assess the cost thereof to



the owners of the property within the Planned Development District.

2. No common open space may be put to any use other than as specified in the approved final development plan unless the development plan has been modified to permit such other use pursuant to subsection 7 of this section. No such modification of use shall be deemed as a waiver of any of the provisions of the approved final development plan, assuring the permanent retention and maintenance of the common open space.

f) **Undergrounding of Utilities:** In any planned development which is primarily designed for or occupied by dwellings, all electric lines, telephone facilities, fire alarm conduits, street light wiring and other wiring conduits and other similar facilities shall be placed underground by the developer, unless this requirement is waived by the Planning Commission.

9. **Final Approval:** The final development plan and program meeting the requirements listed in the preceding sections shall be presented to the Planning Commission with a request for final approval.

10. Building permits shall be issued for construction only in accord with the plan and program elements of the plan as finally approved by the Planning Commission.

11. **Modification to Development:**

a) **Major Modification:** Application for major modifications in the final development plan

and program must be submitted to the Planning Commission, and hearings held and recommendations made by it, and the Tribal Council as if such application were an original application for a Planned Development District.

- b) **Minor Modification:** Minor modification in the final development plan and program may be approved by the Director of Planning. Such changes may include minor shifting of the location of buildings, proposed streets, public or private ways between the easements, parks or other features of the plan, but shall not include those changes of boundaries, changes in land use or other changes of location which are not devoted to specific land uses.

12. **Review of Grant to Rezone:** If, within three years after the granting of an application for a Planned Development District, substantial construction has not been performed on the approved project, the Planning Commission shall review on its own motion the grant of such rezone application at the public hearing after giving written notice of such hearing to all persons claiming any right, title or interest of record in and to the affected property, which notice shall be given at least twenty (20) days prior to such hearing, and after otherwise giving notice of such hearing as required by this Amended Zoning Ordinance. Such hearings shall be held at times, and in the manner, prescribed by said ordinance and may be continued as provided therein. At such hearings, the Planning Commission shall adopt a motion on the affirmative vote of a majority of its voting members which shall recommend to the Tribal

Council that the existence of such Planned Development District be continued, or that the area within such Planned Development be rezoned to another zone. In the event such recommendation is that the area be rezoned, the procedure specified in Section 13 of this Amended Zoning Ordinance shall be followed to effect such rezone. The section shall not be construed so as to divest the Planning Commission and the Tribal Council of authority to otherwise rezone property within a Planned Development District pursuant to and in accordance with the provisions of Section 13 of this ordinance.

13. Reconstruction of Buildings or Improvements: Replacement or reconstruction of any buildings or improvements to buildings damaged or destroyed shall substantially conform to the originally approved Planned Development Plan.

14. Any waterway: No planned development project will be allowed within 200 feet of any waterway.

\* \* \* \*

DONE ON \_\_\_\_\_, 1972,

by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against.

/s/ \_\_\_\_\_

Robert B. Jim, Chairman  
Yakima Tribal Council

ATTEST:

/s/ \_\_\_\_\_

Genevieve Hooper, Sec.  
Yakima Tribal Council



